

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petitions:** 71-029-13-1-1-20086-15  
71-029-13-1-1-20087-15  
71-029-13-1-1-20088-15  
71-029-13-1-1-20089-15  
71-029-13-1-1-20090-15  
71-029-13-1-1-20091-15  
71-029-13-1-1-20092-15  
71-029-13-1-1-20093-15

**Petitioners:** William and Winnie Minor<sup>1</sup>

**Respondent:** St. Joseph County Assessor

**Parcels:** 71-07-14-401-028.000-029 [Lot 12]  
71-07-14-401-033.000-029 [Lot 17]  
71-07-14-401-032.000-029 [Lot 16]  
71-07-14-401-036.000-029 [Lot 20]  
71-07-14-401-035.000-029 [Lot 19]  
71-07-14-401-037.000-029 [Lot 21]  
71-07-14-401-038.000-029 [Lot 22]  
71-07-14-401-039.000-029 [Lot 23]

**Assessment Year:** 2013

The Indiana Board of Tax Review (Board) issues this determination in the above matter, and finds and concludes as follows:

**Procedural History**

1. The Petitioners initiated their 2013 assessment appeals with the St. Joseph County Assessor on November 8, 2013.
2. On March 12, 2015, the St. Joseph County Property Tax Assessment Board of Appeals (PTABOA) issued its determinations denying the Petitioners any relief.
3. The Petitioners timely filed Petitions for Review of Assessment (Form 131s) with the Board. They elected the Board's small claims procedures.
4. The Board issued notices of hearing on September 16, 2016.
5. Administrative Law Judge (ALJ) Jennifer Bippus held the Board's consolidated administrative hearing on November 3, 2016. She did not inspect the properties.

---

<sup>1</sup> William and Winnie Minor are listed as the Petitioners for Pet. No. 71-029-13-1-1-20086-15. For the remaining seven petitions, Winnie Minor is listed as the sole Petitioner.

6. Winnie Minor appeared *pro se* and was sworn as a witness. Attorney Frank Agostino appeared for the Respondent. County Assessor Rosemary Mandrici and Deputy Assessor Patricia St. Clair were sworn as witnesses for the Respondent.

### **Facts**

7. The properties under appeal are eight unimproved parcels located on Gaited Horse Trail in South Bend.
8. The PTABOA determined the following total assessments for each parcel:
  - Lot 12 – \$1,600
  - Lot 17 – \$1,100
  - Lot 16 – \$1,700
  - Lot 20 – \$800
  - Lot 19 – \$1,300
  - Lot 21 – \$900
  - Lot 22 – \$1,300
  - Lot 23 – \$2,200
9. On their Form 131s, the Petitioners requested the following total assessments:
  - Lot 12 – \$1,300
  - Lot 17 – \$1,000
  - Lot 16 – \$1,600
  - Lot 20 – \$700
  - Lot 19 – \$1,200
  - Lot 21 – \$800
  - Lot 22 – no value requested
  - Lot 23 – \$2,000

### **Record**

10. The official record for this matter is made up of the following:
  - a) Form 131s with attachments,
  - b) A digital recording of the hearing,
  - c) Exhibits:

The Petitioners did not submit any exhibits.

Respondent Exhibit 1: 2013 subject property record cards,

Respondent Exhibit 4: Memorandum from the Department of Local Government Finance (DLGF) entitled *Certification of Agricultural Land Base Rate Value for Assessment Year 2013*.<sup>2</sup>

Board Exhibit A: Form 131s with attachments,

Board Exhibit B: Notices of hearing dated September 16, 2016,

Board Exhibit C: Hearing sign-in sheet.

d) These Findings and Conclusions.

### **Contentions**

11. Summary of the Petitioners' case:

a) The properties' assessments are too high. There are "big towers" situated on the lots. Additionally, the lots are encumbered by retention ponds that "are five times larger than what they should have been." These parcels are "nontillable and almost unsellable." *Minor argument.*

b) As a prior township assessor, Ms. Minor opined that "the assessor can look at each property separately and make adjustments if it's warranted." These lots, however, "were not looked at." The Petitioners inquired as to why the assessments increased, but never received a response. *Minor argument.*

12. Summary of the Respondent's case:

a) The properties are correctly assessed. The assessments increased because the agricultural land base rate established by the DLGF increased. That rate increased from \$1,630 per acre in 2012 to \$1,760 per acre in 2013. There was no other change to the assessments. *Mandrici testimony; Resp't Ex. 4.*

### **Burden of Proof**

13. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass'r*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). The burden-shifting statute as amended by P.L. 97-2014 creates two exceptions to that rule.

14. First, Ind. Code § 6-1.1-15-17.2 "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year." Ind. Code § 6-1.1-15-17.2(a). "Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is

---

<sup>2</sup> The Respondent listed Respondent's Exhibits 2, 3, and 5 on her exhibit cover sheet, however, she did not introduce these exhibits at the hearing.

correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).

15. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15.” Under those circumstances, “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d). This change was effective March 25, 2014, and has application to all appeals pending before the Board.
16. Here, the parties agree the total assessment for each parcel under appeal increased by more than 5% from 2012 to 2013. Because of the increase, the Respondent conceded she had the burden of proof. Thus, according to the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 the Respondent has the burden to prove the 2013 assessments are correct.

### **Analysis**

17. The Respondent made a prima facie case that the 2013 assessments are correct.
  - a) The properties under appeal have been assessed as agricultural land. While normally a party must present market-based evidence to prove the value of the property at issue, agricultural land is assessed according to specific statutes and regulations. The legislature has directed the DLGF to use distinctive factors, such as soil productivity, that do not apply to other types of land. Ind. Code § 6-1.1-4-13. The DLGF determines a statewide base rate by taking a rolling average of capitalized net income from agricultural land. *See* 2011 GUIDELINES, CH. 2 at 77-78; *see also* Ind. Code § 6-1.1-4-4.5(e). Assessors then adjust that base rate according to soil productivity factors. Depending on the type of agricultural land at issue, assessors may then apply influence factors in predetermined amounts. *Id.* at 77, 89, 98-99.
  - b) Because the Respondent had the burden of proof, she had to prove the properties were correctly assessed. In order to prove the assessments were correct, she explained the parcels were assessed according to the statutes and rules for agricultural property. In support of this, she offered the relevant property record cards, and further testified that the properties’ assessments increased only because the DLGF increased the agricultural base rate. Accordingly, the Board finds the Respondent made a prima facie case the 2013 assessments are correct. The burden therefore shifts to the Petitioners.
  - c) In an attempt to rebut the Respondent’s case, Ms. Minor argued that because the parcels include utility towers and retention ponds, the Respondent “could have” made adjustments to the assessments. However, Ms. Minor failed to offer any evidence as to what those adjustments should have been, nor did she prove any adjustments were

warranted. *See Talesnick v. State Bd. of Tax Comm'rs*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001) (stating that a petitioner has the burden to produce “probative evidence that would support an application of a negative influence factor and quantification of that influence factor.”)

- d) The Petitioners also attempted to argue the properties are “nontillable and almost unsellable.” It appears the Petitioners are attempting to argue the agricultural land methodology prescribed in the Guidelines was not applied properly. It appears from the subject property record cards the parcels are currently assessed as “tillable.” Agricultural land is categorized according to its land use type and soil identification, “tillable” and “nontillable” are two of those types. Tillable land is land used for cropland or pasture that has no impediments to routine tillage. Cropland is used for production of grain or horticultural crops such as corn, soybeans, wheat, rotation pasture, hay, vegetables, orchard crops, land used for cover crops, land in summer fallow, idle cropland, land used for Christmas tree plantations, land used for nursery plantings. Nontillable land is covered with brush or scattered trees, or permanent pasture land with natural impediments that deter use for crop production. *See* 2011 GUIDELINES, CH. 2 at 88-89. Unfortunately for the Petitioners, they failed to present any probative evidence to support their position that the properties are incorrectly categorized. Additionally, their testimony is too conclusory to support a change in the assessments. *See Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119, (Ind. Tax Ct. 1998).
- e) Here, the Respondent made a prima facie case that the Petitioners failed to rebut. Accordingly, no change to the assessments is warranted.

### **Conclusion**

18. The Board finds for the Respondent.

## Final Determination

In accordance with these findings and conclusions, the 2013 assessments will not be changed.

ISSUED: January 31, 2017

---

Chairman, Indiana Board of Tax Review

---

Commissioner, Indiana Board of Tax Review

---

Commissioner, Indiana Board of Tax Review

### - APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days of the date of this notice.

The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.